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Audio Visual Services Group, LLC and International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories, and Canada, Local 720. Case 28–CA–265596

January 28, 2022

DECISION AND ORDER

BY MEMBERS KAPLAN, WILCOX, AND PROUTY

On August 13, 2021, Administrative Law Judge Eleanor Laws issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party filed answering briefs, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs¹ and has decided to affirm the judge’s rulings, findings,² and conclusions and to adopt the recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Audio Visual Services Group, LLC, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

¹ The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

² We adopt the judge’s finding that the Respondent unlawfully failed to provide the Union with requested relevant information regarding the Respondent’s possible untimely payment of PSAV bargaining unit employees in December 2019. We agree with her rejection of the Respondent’s defense that it had no duty to provide the requested information because the Union failed to comply with grievance processing deadlines under the PSAV collective-bargaining agreement. We further note that it is well established that an employer must provide a union with relevant information requested in connection with a grievance even if the employer has a potential procedural defense to the grievance. See, e.g., *Endo Painting Service*, 360 NLRB 485, 485 (2014), *enfd. mem.* 679 Fed.Appx. 614 (9th Cir. 2017); *Charles S. Wilson Memorial Hospital*, 331 NLRB 1529, 1529 (2000); *Southeastern Brush Co.*, 306 NLRB 884, 884 fn. 1 (1992). In addition, we clarify that in finding it unnecessary to pass on whether the PSAV agreement had expired at the time of the information request, the judge was actually finding it unnecessary to pass on whether the agreement—having expired at the end of 2019—represented the status quo for former PSAV employees. See generally *Hinson v. NLRB*, 428 F.2d 133, 139 (8th Cir. 1970) (finding that “the status quo is . . . defined by reference to the substantive terms of the expired contract”).

“Refusing to bargain collectively with International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories, and Canada, Local 720 (the Union) by failing or refusing to provide it with requested information that is relevant and necessary to the Union’s performance of its functions as the collective-bargaining representative of the employees in the following appropriate unit:

[A]ll employees in the bargaining unit who, now or hereafter, perform work under one (1) or more of the Job Classifications, as set out under Article 6 [of the collective-bargaining agreement]; excluding all other employees.”

2. Substitute the following for paragraph 2(b).

“(b) Post at its Las Vegas, Nevada facility copies of the attached notice marked “Appendix.”⁴ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 29, 2020.”

We note that the judge inadvertently found that the Respondent sent the Union a letter on May 27, 2020, rather than on the correct date, May 22, 2020. We correct this minor error, which does not affect our decision.

³ We shall modify the judge’s recommended Order in accordance with our decision in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020), and to include the unit description referenced in the complaint and contained in the PSAV collective-bargaining agreement. We shall substitute a new notice to conform to the Order as modified and the Board’s standard remedial language.

⁴ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. January 28, 2022

Marvin E. Kaplan, Member

Gwynne A. Wilcox, Member

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories, and Canada, Local 720 (the Union) by failing or refusing to provide it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our employees in the following appropriate unit:

[A]ll employees in the bargaining unit who, now or hereafter, perform work under one (1) or more of the Job Classifications, as set out under Article 6 [of the collective-bargaining agreement]; excluding all other employees.

¹ All dates are in 2020 otherwise indicated.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information that it requested on June 29, 2020.

AUDIO VISUAL SERVICES GROUP, LLC

The Board's decision can be found at www.nlrb.gov/case/28-CA-265596 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Rudolfo Martinez, Esq., for the General Counsel.

David Shankman, Esq., *Michael Willats, Esq.*, for the Respondent.

Sean McDonald, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS Administrative Law Judge. This case was tried virtually using the Zoom for Government platform on May 11–13, 2021. The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 720 (the Union or Charging Party) filed the original charge on September 2, 2020, and the amended charge on September 3, 2020.¹ The General Counsel issued the complaint on February 5, 2021. Audio Visual Services Group, LLC (the Respondent or PSAV)² filed a timely answer denying all material allegations.

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing to provide the Union with relevant requested information.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a limited liability company with an office and place of business in Las Vegas, Nevada, has been engaged in the business of providing event technology services at hotels and conference centers. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent and the Union have a bargaining history dating back to 2004. The most recent agreement was entered into on January 1, 2015 (the PSAV agreement). The scope of the agreement covers "all employees in the bargaining unit who, now or hereafter, perform work under one (1) or more of the Job Classifications, as set out under article 6 hereof, but excluding

² Audio Visual Services Group, LLC operated under the trade name PSAV.

all other employees.” (Jt. Exh. 1.)³ The contract expired on December 31, 2018, and the parties have not negotiated a new agreement.⁴

The Respondent utilizes two general categories of labor to operate its business of providing event technology services. The “house crew” consists of a regular workforce for a property where the Respondent has a presence and a crew, but no union facility. The Employer is not obligated to contact the Union for labor for positions at these locations unless house crew employees are not able to satisfy all the work that needs to be done. When additional labor is needed, the Respondent requests supplemental labor from the Union pursuant to article 4 of the PSAV agreement.⁵ The Respondent can request employees by name or by skill. PSAV requested and the Union dispatched employees under the contract up until early March 2020, when the COVID-19 pandemic shut everything down.⁶ (Tr. 43.)

On February 24, 2018, Encore Event Technologies, Inc., entered into a collective-bargaining agreement with the Union. This agreement remains in effect until December 31, 2022, and covers:

all traditional stagehand and wardrobe work performed by the Employer at the Las Vegas Convention Center and in the Las Vegas Metropolitan area (measured as a fifty [50] mile radius from the Las Vegas Convention Center) related to the production of trade shows, exhibitions, conventions, or the temporary or permanent installation of any stages, lighting, audio, video, or scenic elements and work performed in legitimate theater, showrooms, or lounges.

The agreement is referred to as the “fixed facility” agreement, and applies only where the Employer maintains a permanent facility in the Las Vegas metro area of at least 30,000 square feet and at least 100 full-time permanent employees. (Jt. Exh. 2.)

The Respondent acquired Encore Event Technologies, a previous competitor and a much larger entity, in October 2019.⁷

³ Abbreviations used in this decision are as follows: “Tr.” for transcript; “R. Exh.” for the Respondent’s exhibit; “GC Exh.” for the General Counsel’s exhibit; “Jt. Exh.” for joint exhibit; “GC Br.” for the General Counsel’s brief; “R Br.” for the Respondent’s brief, and “CP Br.” for the Charging Party’s brief. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited but rather are based on my review and consideration of the entire record.

⁴ The parties dispute whether the agreement is still in effect, but there is no dispute that it was in effect at least through December 31, 2019.

The parties dispute whether the agreement is still in effect, but there is no dispute that it was in effect at least through December 31, 2019.

⁵ The dispatch procedures are outlined generally in the contract but it is somewhat outdated, as there is currently a web portal.

⁶ Iwaki testified that she applied the fixed-facility agreement for supplemental labor since she assumed her role as human resources director in January 2020. (Tr. 258.) Iwaki did not testify how she applied the fixed facility agreement, and the evidence shows that the human resources director was not involved in the mechanics of any requests for or dispatch of supplemental labor under any contract. Iwaki testified that her job entailed “[g]eneral HR functions as well as labor relations” and that her interactions with the Union involved “[t]ypically receiving grievances and responding to them.” (Tr. 238.) Thorne’s more specific testimony that she actually saw the requests and dispatch reports, along with Nguyen’s testimony that human resources was not involved in the day-to-day operations of knowing supplemental labor needs, leads to the conclusion that higher-level human resources officials were not involved in the daily mechanics of dispatching labor. (Tr. 32, 43.)

Encore Event Technologies and Audio Visual Services Group, LLC were legally merged effective January 1, 2021. (R. Exh. 18.) Audio Visual Services Group, LLC changed its name to Encore Group (USA), LLC on January 1, 2021. (R. Exh. 2.)⁸

Thuytien “Tweetie” Nguyen is a senior human resources manager who worked for PSAV and then Encore.⁹ Michael Willats from the law firm Shankman Leone, P.A, represents the Respondent with regard to labor relations matters, including negotiating collective-bargaining agreements. Marielle “Apple” Thorne is a business representative for the Union. Cliff Paschell, is a union business agent.

On December 23, 2019, Willats sent Thorne a letter to notify the Union that PSAV had decided to terminate the existing collective-bargaining agreement and was interested in beginning negotiations for a successor agreement. (R. Exh. 27.) The parties agreed to meet on February 19, 2020.

On January 3, 2020, Paschell sent Nguyen a request for a step 1 meeting pursuant to Section 15.02(b) of the labor agreement between PSAV and the Union alleging failure to pay certain members’ wages on time from December 5–16, 2019, for work on the ASHP show at Mandalay Bay. (GC Exh. 6.) The Union’s position was that the employees were entitled to penalty payments. During a follow-up communication, the Union provided a spreadsheet indicating which members it claimed were owed money. In a phone call on March 6, Thorne and Paschall agreed to give Willats more time to analyze the individual claims. The March 6 call concluded with Willats saying he would get back to the Union.¹⁰ The parties agreed to extend step 1. (Jt. Exh. 7; Tr. 101–102, 222.)

During a call on April 27, Willats advised the Union that Encore determined the grievance did not have merit, and he had identified a deficiency for each named member. On May 27, Willats sent Paschall a letter following up on the information Paschall had requested during the step 1 grievance discussion. He identified three categories of deficiencies that impacted the

⁷ Respondent Exhs., 3–11 concern various aspects of the integration, about which Deborah Klein, vice president and general counsel for Encore, testified at length, including the fact that many of the documents did not apply to union employees. The Respondent began consolidating senior management and made other operational changes following the acquisition, as noted in R Br. 4–10. I have considered this evidence, but I do not find these changes to be material to the information request before me.

⁸ The Respondent contends they were considered integrated for operational purposes by March 2020. Kellie Russell is vice president of human resources North America for Encore, and previously was vice president of human resources with Audio Visual Services Group. William Jett became the senior vice president of hotel operations for the Las Vegas region with PSAV in January 2020. Shari Iwaki is Encore’s human resources director for the Las Vegas area. Prior to January 2020 she was director of employee and labor relations for Encore Event Technologies.

⁹ In what will surely be a top contender in any contest for the most absurd transcription error in the age of imperfect audio in a virtual proceeding, Thorne ostensibly worked as a Princess of Egypt beginning in January 2013. (Tr. 57.)

¹⁰ Meanwhile, the Union filed a petition to represent the legacy PSAV employees on January 23. A hearing was held on February 4. During the hearing, the Respondent informed the Union that integration of PSAV and Encore would be complete as of March 23, after which time the fixed facility agreement would apply to all work in Las Vegas. On February 6, 2020, Shankman sent Thorne a letter notifying her that his firm represented Encore in all labor relations and instructing her to cease all organizing efforts on behalf of Encore’s house crew employees. (R. Exh. 14.)

processing of payments, and identified the employees who fell under each category: (1) Paid for all submitted work within contract timelines; (2) Late onboarding paperwork; and (3) Errors in steward report. (R. Exh., 30.) At 5:22 p.m. on June 29, Willats sent Paschall an email stating, “Following up on the correspondence we sent on May 22, 2020, detailing why the late check grievance you filed lacked merit. Since we have not heard back from you, we are considering this mattered (sic) closed.” (Jt. Exh. 4.)

On June 29, at 8:11 p.m., Thorne sent an email to Willats informing him that the Union did not consider the matter closed, and the information the Respondent had provided so far was inadequate. She requested the following information:

1. Please provide copies of all PSAV issued pay stubs that reflect payment for “all submitted work within contract timelines” as referenced in your May 22 correspondence for the following employees, Boggs, Josh; Cordero, Angel; Hall, Jason; and Skoro, Andrei.

a) Please also provide the date the checks were sent to IATSE Local 720.

2. Please provide the date that new hire paperwork (Onboarding Paperwork) was filled out for each of the following employees, Alva, Jose; Baum, Eric; Bradshaw, Dylan; Chicoine, Courtney; Day, Ronald; Dealvardo, Michael; DeAngelis, Frederick; Dovan, Andre; Enneper, Jeremy; Essency, Scott; Fanello Dvorak, Jennifer; Heiob, Robert; Hovey, Jerry; Jones, Clarence; Jr, Doran Atwood; Jr, John Wilson; Jr, William, Allen; Kawamoto, Alvin; Kleiner, Robert; Linzzy, L. 2; McAllister, Don; McWilliams, Toyshika; Medina-Seminario, Adria; Menist, Glenn; Messer (Scott), Patricia; Quiroz, David; Rebolledo, Fred J.; Riley, Kelly; Roberts, Claranna; Robinson, Ronald; Rodriguez, Anthony M; Walker, Willie W; Westbrook, Robert; Williams, Lyndsey; and Wilson, Jeff.

a) For each of the employees listed, if the date that PSAV received this new hire paperwork (Onboarding Paperwork) is different than the date the paperwork shows it was filled out, please provide that date in addition.

3. PSAV claims there were errors in the Steward Report as to each of the following employees: Alva, Jose; Arent, Frank; Aromin, Jennifer; Bahurka, John; Barker, Clint; Bartlett, Carlos; Baskin, Leon; Bindson, Bradley; Blodget, Jason; Callahan, John; Castro, Alexy; Chuma, William; Clarence, Jones; Cole, Lynne; Crandall, Curtis; Cruz, Ruben; Davis, Richard; Deen, Cynthia; Diaz, Giovanni; Dow, Clinton; Dovan, Andre; Duke, Jerry; Ealey, Joshua; Elgin-Garcia, Randin; Elmer, Katherine; Fiorentino, Tony; Fitzgerald, Eric (Wolf); Fodor, Steve; Ford, Paul; Franks, Holly; Gall, Steve H; Gallegos, Pauline; Garra, James; Grace, Charles K; Hall, Joseph; Heiob, Robert; Heinrich, Justin; Holderman, Joshua; Hunter, Vincent; Jakubiec, Joseph; Jenkins, Jesse; Jr, John Wilson; Jr, Steve D Gall; Kalman, Paula; Kitts, Chuck; Laspina, Paul; Leal, Mundo; Lira, Dave; Livolsi, William; Lomax, Brian; Manoff, Alen; Martinez, Jessica; Masell, Nicolas; Mealie, Joseph; Moore, Charles; Murray, David; Olson, Stephen; Paschall, Andrew; Paschall, Chris; Pong, Steven; Ramsey, Shawn; Regan, Dan; Richmond, Maurice; Riley, Kelly; Riley, Pat; Robins, Todd; Rodriguez, Anthony M; Rodenberg, Dieter; Schulman, David; Serratos, Oscar M; Swinehart, Todd; Tally, Myfanwy; Tanner, Otis; Trihub, Ben; Walters, Clayton; Wason, Stuart; and Wilson, Herbert.

a) As to each employee listed, please identify and explain the nature of the error in the Steward Report.

b) As to each employee listed, provide the date on which PSAV was made aware of the error.

4. As you know, the PSAV Production Manager on site is responsible for payroll and receives and reviews each Steward Report. Please provide a copy of the job requirements for the PSAV Production Manager job classification relevant to payroll and payroll processing.

5. Please provide the names of all PSAV Production Managers who accepted the Steward Reports you identify in response to the Union’s question number 3 above.

(Jt. Exh. 5.) Thorne asked that the information be provided no later than July 7. Willats responded later that day as follows:

Our correspondence on May 22, 2020 was not in response to an information request. We identified for you why we believed each of the claims in your grievance lacked merit and the applicable category or categories of reasons why. As such your grievance has been denied.

We are in receipt of your information request below. Your arbitrary deadline is not realistic given the pandemic and furlough of most payroll department employees. We will review the requests with our client and provide our response within a reasonable time.

(Jt. Exh. 5.)

On August 3, Paschall sent Willats the following email:

Hi Michael,

It has been several weeks since our information request on June 29, 2020.

We requested the information to be available by July 7, 2020.

You stated that you needed more time.

It has been over 30 days and we still have not received the requested information or heard from your office concerning this matter.

(Jt. Exh. 7.) Willats responded the next day, stating:

Cliff,

This matter is closed. We advised you on June 29, 2020 that your grievance had been denied. The union never invoked step two and never requested—and was not granted—an extension on the timeline with which to do so. Therefore the grievance was waived. With no pending grievance and the contract having since expired, there is no basis for the union’s information request.

(Jt. Exh. 7.)

The parties continued a back-and-forth about their disagreements on timeliness and other contract issues.

If a grievance is not resolved at step 1, either party may refer the matter to a mediator from the Federal Mediation and Conciliation Service within 7 working days of the step 1 decision. The Union did not invoke step 2. The Respondent did not provide the requested information to the Union.

III. DECISION AND ANALYSIS

Pursuant to Section 8(a)(5) of the Act, each party to a bargaining relationship is required to bargain in good faith. Part of that obligation is that both sides are required to furnish relevant information upon request. *NLRB v. Acme Industrial Co.*, 385 U.S.

432 (1967). The employer's duty to provide relevant information exists because without the information, the union is unable to perform its statutory duties as the employees' bargaining agent. Like a flat refusal to bargain, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act" without regard to the employer's subjective good or bad faith. *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg. Co.*, 237 NLRB 747, 751 (1978), *enfd.* 603 F.2d 1310 (8th Cir. 1979).

Information concerning employees in the bargaining unit and their terms and conditions of employment, is deemed "so intrinsic to the core of the employer-employee relationship" to be presumptively relevant. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Sands Hotel & Casino*, 324 NLRB 1101, 1109 (1997). Presumptively relevant information must be furnished on request to employees' collective-bargaining representatives unless the employer establishes a legitimate affirmative defense to the production of the information. *Metta Electric*, 349 NLRB 1088 (2007); *Postal Service*, 332 NLRB 635 (2000). "If an employer effectively rebuts the presumption of relevance, however, or otherwise shows that it has a valid reason for not providing the requested information, the employer is excused from providing the information or from providing it in the form requested." *United Parcel Service of America*, 362 NLRB 160, 162 (2015).

When the union requests information about nonunit employees, it has the burden of establishing the relevance of the requested information to its representational duties. *Richmond Health Care*, 332 NLRB 1304 (2000); *Associated Ready Mixed Concrete, Inc.*, 318 NLRB 318 (1995), *enfd.* 108 F.3d 1182 (9th Cir. 1997). "To demonstrate relevance, the General Counsel must present evidence either (1) that the union demonstrated relevance of the nonunit information, or (2) that the relevance of the information should have been apparent to the Respondent under the circumstances." *Disneyland Park*, above, at 1258; citing *Allison Corp.*, 330 NLRB 1363, 1367 *fn.* 23 (2000); *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018–1019 (1979), *enfd.* in relevant part 615 F.2d 1100 (5th Cir. 1980).

The burden of establishing relevance is not heavy as the Board applies a liberal, discovery type of standard. *NLRB v. Acme Industrial Co.*, 385 U.S. at 437; *DirectSat USA, LLC*, 366 NLRB No. 40, slip op. 1 *fn.* 2 (2018). This burden is satisfied when the union demonstrates a reasonable belief, supported by objective evidence, that the requested information is relevant. *Knappton Maritime Corp.*, 292 NLRB 236, 238–239 (1988). In determining possible relevance, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, not hearsay, or even ultimately reliable. *Postal Service*, 337 NLRB 820, 822 (2002). The union must only show that the requested information has some bearing on the matter in dispute, and it will be of potential or probable use

to carrying out its representational duties. See *PAE Aviation & Technical Services LLC*, 366 NLRB No. 95, slip op. at 3 (2018); *Public Service Co. of New Mexico*, 360 NLRB 573, 574 (2014).

"When a union makes a request for relevant information, the employer has a duty to supply the information in a timely fashion or to adequately explain why the information will not be furnished." *Regency Service Carts*, 345 NLRB 671, 673 (2005). The duty to furnish information requires a reasonable, good-faith effort to respond to the request as promptly as circumstances allow. See *Good Life Beverage Co.*, 312 NLRB 1060, 1062 *fn.* 9 (1993).

A. Relevance of Information Requested

All of the information requested pertains to a dispute about bargaining unit members' pay. As such, the Union's requests are presumptively relevant as they directly concern members' wage payments. Even assuming the requests for a copy of the job description for the PSAV production manager job classification and the names of all PSAV production managers who accepted the steward reports the Respondent claims were erroneous are not presumptively relevant, I find the General Counsel has established relevancy. The information was sought to address the Respondent's contention, in connection with the pay dispute at issue, that it was not liable for any late wage payments. There can be no doubt that information pertaining to the timely payment of bargaining unit employees' wages is relevant to the employees' bargaining representative. Accordingly, I find the information requested was very clearly relevant.

B. The Respondent's Defenses

1. Single employer/integration with Encore

The Respondent contends that PSAV and Encore Event Technologies are a single employer. At the time of the events underlying the Union's request, there is no dispute that PSAV was an employer and was operating under a collective-bargaining agreement with the Union. Accordingly, whether Encore Event Technologies and PSAV were operating as a single employer is irrelevant.¹¹ The Union requested relevant information, and the Respondent was obligated to respond, whatever its claimed legal corporate structure.

More specifically, the Respondent argues that because PSAV and Encore Event Technologies are a single employer, Encore's fixed facility agreement applied to the affected unit employees. There is no contention that the Union ceased to represent the employees named in the request. The Union requested presumptively relevant information concerning its members' pay, and regardless of the Respondent's claimed structure and purported unilateral belief about which contract (if any) applied, the Respondent was obligated to provide the information or provide a valid reason for not doing so.¹² See *NLRB v. Yawman & Erbe*

¹¹ While resolution of the single employer issue is unnecessary for me to decide this case, the evidence shows that as of December 2019, the two entities were not integrated. As Klein testified, within a week or two of the Respondent's purchase of Encore Event Technologies, "we kicked off a large integration meeting including, you know, leadership from across all parts of the now-combined entities to work on an integration plan. And that went on for some months and formally concluded with the merger that we talked about earlier that took effect earlier this year, January 1st [2021]." (Tr. 117, emphasis supplied.) Moreover, Nguyen testified that she did not really understand what PSAV's acquisition of Encore Event Technologies meant until February of 2020, when she

learned about it at the representation hearing referenced above in footnote 10. (Tr. 73, 76.) From the Union's standpoint, Thorne provided persuasive testimony that PSAV requested and the Union delivered employees under the contract between PSAV and the Union until the pandemic shut down operations in March 2020.

¹² The Respondent cites to caselaw regarding determination of appropriateness of a single unit upon a finding of single employer. (R Br. 22.) This requires application of the "community of interests" standard, as articulated and applied by the cases the Respondent cites. The Respondent, who bears the burden to prove its defense, presented no argument regarding community of interests, perhaps because the record is not

Mfg. Co., 187 F.2d 947 (2d Cir. 1951) (Determination that the information was relevant was not affected by the subsequent execution of a contract without disclosure; “The most that can be inferred from the Union’s action is that the advantages of a contract in hand outweigh those which the Union might later obtain when all relevant information would be available to it.”)

I find, based on the forgoing, the Respondents’ defenses based on its asserted single employer status fail.

2. Waiver

The Respondent contends that the Union does not need the requested information anymore because it waived its right to pursue the grievance about the pay issue by failing to invoke step 2 in a timely manner. The Respondent concedes that the grievance was timely filed under the PSAV agreement and agrees that had the Union properly seen the grievance through, the information request would have appropriately fallen under the PSAV agreement’s process. The Respondent asserts that by failing to invoke step 2 of the grievance process, the Union waived any further right to process the grievance underlying the request for information. Because step 2 was not invoked, the PSAV contract was no longer in the mix and the fixed facility agreement applied, and there was nothing left to bargain about, so the Respondent argues.

“[T]he mere existence of a grievance machinery does not relieve a company of its obligation to furnish a union with information needed to perform its statutory functions.” *Timken Roller Bearing Co.*, 138 NLRB 15, 16 (1962). The Board explained in *Westinghouse Electric Corp.*, 239 NLRB 106 (1978), its adoption of a broad rule regarding information requests about wages and related information, stating:

The application of this “broad rule” was illustrated by another circuit court when it cited with approval the following excerpt from Chairman Guy Farmer’s concurring opinion in *Whitin Machine Works*, 108 NLRB 1537, 1541 (1954):

[T]his broad rule is necessary to avoid the disruptive effect of the endless bickering and jockeying which has theretofore been characteristic of union demands and employer reaction to requests by unions for wage and related information. The unusually large number of cases coming before the Board

developed on this issue. Thus, even assuming single employer status exists and is somehow relevant to pay issues that arose in 2019, any argument that it has been established as a defense fails.

Assuming I must address the Respondent’s contention that the fixed facility agreement applies to the employees covered by the PSAV agreement to resolve the information request, I find the Respondent has not met its burden. The Board places a heavy evidentiary burden on a party attempting to show that historical units are no longer appropriate, requiring a showing of “compelling circumstances” not present here. *Cadillac Asphalt Paving Co.*, 349 NLRB 6 (2007).

¹³ Likewise, in *Hofstra University*, 324 NLRB 557 (1997), the Union requested a draft report prepared by a consultant that evaluated the clerical staff. The employer asserted that the draft report was not relevant to the unions’ bargaining duties because the project for which it was compiled was terminated, and the respondent did not use the report to prepare for bargaining. The Board, in finding the information relevant, stated, “because the draft report contained information pertaining to unit employees’ working conditions, ‘it is not required that the union show the precise relevancy of the requested information to particular current bargaining issues.’” *Id.* at fn. 5, quoting *Teleprompter Corp. v. NLRB*, 570 F.2d 4, 8 (1st Cir. 1977).

Even if there was some requirement to tie the requested information to a specific grievance, the waiver defense still fails. The Union has

involving this issue demonstrates the disturbing effect upon collective bargaining of the disagreements which arise as to whether particular wage information sought by the bargaining agent is sufficiently relevant to particular bargaining issues. I conceive the proper rule to be that wage and related information pertaining to employees in the bargaining unit should, upon request, be made available to the bargaining agent without regard to its immediate relationship to the negotiation or administration of the collective-bargaining agreement.

The Board has adopted the foregoing statement and has rejected the contention that the right to relevant information is dependent upon the existence of a particular controversy or the processing of a specific grievance.

(Footnotes omitted), citing *NLRB v. Item Co.*, 220 F.2d 956 (5th Cir. 1955), and *Boston-Herald Traveler Corp.*, 110 NLRB 2097, 2098 (1954), *enfd.* 223 F.2d 58 (1st Cir. 1955). The same rationale holds true here. Clearly, figuring out how the Respondent calculates dates and interprets documents (including steward errors) related to employee wage payments is relevant to the Union’s representation of its members. I therefore find the waiver defense fails.¹³

3. Encore’s response complied with its obligations

Finally, the Respondent asserts that Encore complied with its obligations. First, the Respondent argues that the Union did not need the information. The Respondent cites to the administrative law judge’s determination in *Tyson Foods, Inc.*, 311 NLRB 552, 569 (1993), that absent a showing the requested information was related to a pending grievance or contractual dispute, the employer that demonstrated responding to the request would be burdensome did not violate the Act by refusing to provide the information. The nature of the information request is not mentioned in the decision and is merely referred to as “the information sought in paragraphs 23 and 24 of the complaint.” The word “presumptively” or any variation of it is absent from the decision. It is also unclear from the decision whether the General Counsel or the charging party excepted to the judge’s finding on this point as the Board’s decision does not specifically reference or address it.¹⁴ The Respondent also cites to *Bohemia Inc.*, 272 NLRB 1128, 1129 (1984), but in that case the Board found the

established a reasonable belief, supported by objective evidence, that the requested information was relevant. *Knappton Maritime Corp.*, *supra*; see also *DirectSat USA, LLC*, 366 NLRB No. 40 fn. 4 (2018). The Union did not consider the grievance issue closed, and noted the Respondent in its June 29 correspondence stated, “We are in receipt of your information request below. Your arbitrary deadline is not realistic given the pandemic and furlough of most payroll department employees. We will review the requests with our client and provide our response within a reasonable time.” Thus, the Union had a reasonable belief the matter was not settled and the Respondent would, true to its exact words, provide a response within a reasonable time. The reasonableness is buttressed by the shutdown of operations in the industry and repeated delays associated with this shutdown in all facets of operations starting in the spring of 2020. The timeliness issues related to the grievance and the merits of the grievance are left to the grievance and arbitration process. Similarly, I do not pass on whether the PSAV contract has expired. That issue is not before me, it was not fully litigated, and is not material to the information request allegation before me.

¹⁴ The Board’s decision specifies that the General Counsel excepted to an 8(a)(1) finding relating to the employer’s interference with an employee attempting to talk to a steward. It does not reference the General Counsel or the charging party excepting to any 8(a)(5) findings.

information requested was not presumptively relevant, unlike here. As such, the Respondent's argument relying on these cases is unpersuasive.

The Respondent also argues that the Union rejected Encore's offer to provide the requested information. The nature of this "offer" is premised on the Respondent's contention that the fixed facility agreement applied, and the Union was required to acquiesce to this point as a condition precedent to receiving the information. As discussed above, however, the Respondent was required to provide the Union this presumptively relevant information related to timely payment of members' wages from December 2019, when the PSAV contract was undisputedly still in effect.

The Respondent specifically argues that even assuming the information was requested in relation to bargaining, the fixed facility agreement did not expire until December 21, 2022, thus the Union's request was premature. Of course, as noted directly above, this presumes a determination that the fixed facility agreement applies here, which has not been litigated much less established. In any event, the cases the Respondent cites to concern requests for information that was not presumptively relevant, unlike here, where the information requests pertained to members' wage payments. (R Br. 26.)¹⁵

Based on the foregoing, I find that the Respondent has failed to prove a valid defense, and the General Counsel has met his burden to prove the complaint allegations.

CONCLUSIONS OF LAW

By failing and refusing to provide information the Union requested on June 29, 2020, that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of its employees, the Respondent has violated Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees, the Respondent shall be ordered to furnish the Union with the information requested on June 29, 2020.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁶

ORDER

The Respondent, Audio Visual Services Group, LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 720 (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on June 29, 2020.

(b) Within 14 days after service by the Region, post at its Las Vegas, Nevada facility copies of the attached notice marked "Appendix."¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 29, 2020.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., August 13, 2021.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

¹⁵ *Sara Lee Bakery Group, Inc v. NLRB*, 514 F.3d 422, 431–432 (5th Cir. 2008), involved a request for contracting costs and a contract with another entity; *Gen. Electric Co. v. NLRB*, 916 F.2d 1163, 1170 (7th Cir. 1990), concerned a request for information about payments to subcontractors; *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 868–889 (9th Cir. 1977), dealt with a request for information about employees outside the bargaining unit. In all of these cases, the information requested was not presumptively relevant and it was incumbent upon the union to make a showing of relevance and need.

¹⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in your exercise of the above rights.

WE WILL NOT refuse to bargain collectively with the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 720 (the Union) by refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with your rights under section 7 of the National Labor Relations Act.

WE WILL furnish to the Union in a timely manner the information that it requested on June 29, 2020.

AUDIO VISUAL SERVICES GROUP, LLC

The Administrative Law Judge's decision can be found at www.nlr.gov/case/28-CA-265596 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

